

THE *J. Rogers*  
GENERAL STATUTES

OF THE

STATE OF MINNESOTA:

REVISED BY COMMISSIONERS APPOINTED UNDER AN ACT APPROVED FEBRUARY 17, 1868, AND  
ACTS SUBSEQUENT THERETO, AMENDED BY THE LEGISLATURE,  
AND PASSED AT THE SESSION OF 1866.

TO WHICH

THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT, THE  
ACT AUTHORIZING A STATE GOVERNMENT, AND THE  
CONSTITUTION OF THE STATE OF MINNESOTA,

ARE PREFIXED;

AND A LIST OF ACTS PREVIOUSLY REPEALED,

A GLOSSARY, AND INDEX, ARE ADDED.

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Edited and Published under the authority of Chapters 15 and 16 of  
the Laws of 1866.

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CHAPTER XLIX.

PROBATE COURTS.

SECTION

1. Each organized county to have probate court.
2. Jurisdiction of probate courts.
3. Further jurisdiction of said court.
4. Jurisdiction, when exclusive.
5. Probate court, how held.
6. Office, where kept—delivery of books, &c., to successor.

PROCEEDINGS IN PROBATE COURT.

7. Proceedings in probate courts—powers of judge of probate, how exercised.
8. Books of record to be kept.

SECTION

9. Register to contain, what.
10. Each book to have index.
11. Judge of probate not to act as attorney, when.
12. Costs, how far allowable.
13. Orders, how enforced—process, how issued.

APPEALS FROM PROBATE COURTS.

14. Appeal—when and how taken.
15. Appeal taken by whom.
16. May be taken on questions of law and fact, within sixty days after notice of order or judgment appealed from.

1874-217

Each organized county to have probate court.  
1 Min. 60.  
6 Min. 220.

Jurisdiction of probate courts

1868-136

SECTION 1. There is established in each organized county in this state, a probate court, which shall have and use a seal.

SEC. 2. The several probate courts have exclusive jurisdiction, in the first instance, in their respective counties, to take the proof of wills.

*First.* When the testator at or immediately before his death was an inhabitant of the county, in whatever place he dies;

*Second.* When the testator, not being an inhabitant of this state, dies in the county, leaving assets therein;

*Third.* When the testator, not being an inhabitant of this state, dies out of the state, leaving assets in the county;

*Fourth.* When the testator, not being a resident of this state, dies out of the state, not leaving assets therein, but when assets thereafter come into the county;

*Fifth.* When real property devised by the testator is situated in the county, and no other probate court has gained jurisdiction under either of the preceding sub-divisions of this section.

Further jurisdiction of said court.

SEC. 3. The probate court has jurisdiction also—

*First.* To take proof of a will relating to real property situated in the county, when the testator dies out of this state, not being an inhabitant thereof, and not leaving assets therein;

*Second.* To grant and revoke letters testamentary and of administration;

*Third.* To direct and control the conduct, and settle the accounts of executors and administrators;

*Fourth.* To enforce the payment of debts and legacies and the distribution of the estates of intestates;

*Fifth.* To order the sale, and dispose of the real property of deceased persons;

*Sixth.* To appoint and remove guardians, to direct and control their conduct, and to settle their accounts;

*Seventh.* To take the care and custody of the person and estate of an insane person or spendthrift, residing in the county;

*Eighth.* To direct the admeasurement of dower;

*Ninth.* To exercise the powers and duties conferred upon it by law.

Jurisdiction, when exclusive.

SEC. 4. The jurisdiction acquired by any probate court over a matter or proceeding is exclusive of that of any other probate court, except when

otherwise provided by law, and when a guardian is appointed, or any other proceeding is commenced in the probate court of a particular county, all further proceedings in respect to the same, shall be continued in that court.

SEC. 5. The probate court of each county shall be held by the judge of probate, but if the judge is an executor, administrator or guardian, in respect to an estate or person, which would otherwise come within his jurisdiction, or is interested in said estate, or in any property claimed thereby, or is of kin to said person, or any one interested in such estate or property in such degree as would exclude him as a juror in an action in which any of said persons are parties, the judge of probate of an adjoining county shall have and exercise jurisdiction as in other cases.

Probate court, how held.

1892-130

SEC. 6. The judge of probate shall keep his office open at reasonable hours, suitable and convenient for the transaction of business, and for the deposit and safe keeping of the public books and papers under his charge. He shall keep his office at the county seat, and on the first Monday of each month hold a probate court therein, or at such other place in the county as he may appoint. He shall also provide suitable cases for the books and papers of his office, the expense of which is a county charge; they belong to the county, and shall be delivered by the judge of probate to his successor in office, who has power to complete all unfinished business.

Judge of probate shall keep office, where.

Shall deliver books, &c., to successor.

PROCEEDINGS IN PROBATE COURT.

SEC. 7. There are no pleadings in probate courts, but the proceedings shall conform to the statute, and may be instituted upon the application of a party, verbal or written, which, when verbal, shall be entered in the minutes of the court, and when written, shall be filed. The judge of probate has the same power to examine witnesses and parties on oath, to compel their attendance, to preserve order during any proceedings before him, and punish contempts, as a district judge possesses under the provisions of law. He may exercise his powers, except when otherwise provided by law, by means of—

Proceedings in probate courts.

1890-123

Powers of judge of probate, how exercised.

*First.* A citation to a party.

*Second.* An affidavit, deposition, examination, or statement under oath of a party or witness, or other legal and competent evidence.

*Third.* A subpoena or attachment.

*Fourth.* Orders, judgments and decrees.

*Fifth.* An execution, warrant, or other process to enforce them. *Ad.* 1890-123

SEC. 8. He shall keep—

*First.* A register, in which shall be entered a memorandum of all official business transacted by him, or in his office, appertaining to the estate of each person deceased, under the name of such person; that pertaining to the general guardian of an infant, under the name of such infant; that pertaining to an insane person or spendthrift, under his name.

Books of record to be kept.

1868  
1870-12

*Second.* A record of wills, in which he shall record all wills proven before him, with the certificate of probate thereof; and of all wills proven elsewhere upon which letters of administration are issued by him.

*Third.* A record of appointment of administrators and executors, general guardians of infants, guardians of insane persons and spendthrifts, of the appointment of admeasurers of dower, with all orders relating to the same, and the admeasurers' reports.

SEC. 9. He shall cause to be entered in the register, mentioned in the first subdivision of the preceding section, a summary balance sheet of the accounts of administrators, guardians and trustees before him, with his orders and judgments relating to the same, a memorandum of execution

Register, what shall contain.

issued thereon, with a note of satisfaction when satisfied; also, all orders relating to the sale of real estate, to the distribution of the proceeds thereof, and all orders made by him in the discharge of his official duties.

Each book to have index.

SEC. 10. Each of such books shall have an index referring to the entries in alphabetical order, under the name of the person to whose estate or business they relate, and indicating the page of the book where the entry is made.

Judge of probate cannot be attorney—when.

SEC. 11. A judge of probate cannot be counsel or attorney in any civil action for or against any executor, administrator, guardian, or minor trustee, or other person over whom or whose accounts he would by law have jurisdiction, whether such action relates to the business of the estate or not.

Costs, how far allowable.

SEC. 12. Costs to the extent of the fees and disbursements paid or incurred may be awarded in favor of one party against another, to be paid out of the estate or fund in any proceeding contested adversely before the judge of probate.

Orders, how enforced. Process, how issued.

SEC. 13. Orders for the payment of money may be enforced in the same manner as judgments for the payment of money in the district court; but all process shall be issued by the judge of probate.

APPEALS FROM PROBATE COURTS.

Appeal to district court, when and how taken.

SEC. 14. An appeal may be taken to the district court from a judgment or order in a probate court in the following cases:

*First.* An order admitting a will to record or probate, or refusing the same.

*Second.* An order appointing an administrator, executor, or guardian, or removing him, or refusing to make such appointment or removal.

*Third.* An order directing real property to be sold, mortgaged or leased, or confirming the same.

*Fourth.* An order or judgment by which a debt, claim, legacy, or distributive share is allowed, or payment thereof directed, or such allowance or direction refused, when the amount in controversy exceeds fifteen dollars.

*Fifth.* Judgment upon an accounting by an executor, administrator or guardian, including an intermediate order involving the merits and necessarily affecting the judgment.

Appeal taken, by whom.

SEC. 15. The appeal can only be taken by a party aggrieved, who appeared and moved for, or opposed the order or judgment appealed from, or who being entitled to be heard thereon, had not due notice or opportunity to be heard, the latter fact to be shown by affidavit and filed and served with the notice.

May be taken on questions of law and fact.

SEC. 16. The appeal may be taken upon questions of fact or law, or both, by the service of a notice on the adverse party, stating the appeal from the order or judgment, or some specified part thereof, and by filing a copy of the said notice in the office of the judge of probate, together with a recognizance entered into by the party appealing, with one or more sureties, to be approved by the judge of probate, conditioned that the party will prosecute his appeal with due diligence to a final determination, and pay all costs adjudged against him in the district court; which appeal shall be taken within sixty days after notice of the order or judgment appealed from.

Shall be taken within sixty days after notice of order appealed from.  
9 Min. 149.

1874-217